IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 2086 of 2007
Date of decision 9 .2.2007

M/s Dada Motor Garage .. petitioner

Versus

State of Punjab and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr.RV Bajaj, Advocate for the petitioner

M.M.Kumar, J.

The prayer made by the assessee in this petition, filed under Article 226 of the Constitution, is for quashing orders dated 28.2.2005 (Annexure P.4) passed by the Assistant Excise and Taxation Commissioner, Jalandhar, order dated 26.4.2005 (Annexure P.6) passed by the deputy Excise and Taxation Commissioner (Appeals) Jalandhar and order dated 10.11.2005 (Annexure P.7). The assessee has also prayed for setting aside two orders dated 16.3.2006 and 12.12.2006 (Annexures P.9 and P.11) passed by the Punjab Value Added Tax Tribunal (for brevity 'the Tribunal') be quashed.

Facts of the case are not in dispute.

A tempo bearing registration No. PB 08 AD 1015 was intercepted by the checking party of the Excise and Taxation Department headed by the Excise and Taxation Officer, Jalandhar on 2.9.2004. Some documents including octroi receipt and 11 despatch challan cum invoices were produced by the driver of the vehicle. It was found that the goods were transported through the road route and the driver was asked to produce

proof of declaration at the ICC through which the goods had entered to the State of Punjab. A show cause notice was issued by the checking officer seeking explanation as to why the goods be not detained. The goods were detained and unloaded. When the afore-mentioned documents were not produced and on the request made by one Shri Ram Chander, Manager of the assessee the matter was adjourned to 23.9.2004. Even on the adjourned date he was not able to produce any proof of declaration in form ST XXIV in respect of the goods at the entry point i.e. ICC. The assessee was apprised that Section 14 B of the Punjab General Sales Tax Act,1948 (for brevity 'the Act') was amended w.e.f. 15.7.2002 which requires submission of declaration at ICC and failure to do so would attract penalty equal to 50 percent of the value of the goods under Section 14 B (7)(iii) of the Act. Accordingly, the case was submitted to the Assistant Excise and Taxation Commissioner, Jalandhar for initiation of penalty proceedings under Section 14 B (7)(iii) of the Act. The Assessing Officer after considering reply of the assessee has recorded the following order:

> " .... it is very clear that goods worth Rs 71434/- meant for trala, assessed ICC Shamboo (import) without declaring the goods with willful intention to evade the payment of tax. Dealer has made an attempt to evade the payment of tax and hence the owner of goods has made himself liable for penal action under Section 14 B (7)(iii) of the Act ibid. Penalty in such cases is fixed @ 50 % of the value of goods. Keeping in view the facts and circumstances of the case I impose a penalty of Rs. 35717/- under Section 14 B (7)(iii) of the Act ibid. Detaining officer to release the goods payment of penalty amount."

The appeal filed by the assessee under Section 20 of the Act against the afore-mentioned order has been dismissed by the Deputy Excise and Taxation Commissioner (Appeals) and the order has further been upheld by the Tribunal. Thereafter two rectification applications filed by the assessee have also been dismissed by the Tribunal on 16.3. 2006 (Annexure P.9) and 12.12.2006 (Annexure P.11).

We have heard learned counsel for the assessee and have repeatedly asked him as to how the Tribunal has erred in dismissing the appeal or committed any illegality by failure to consider the issue raised before it which necessitated the filing of rectification applications. However, no satisfactory explanation could be furnished by the learned counsel which may warrant our interference in the impugned orders which involve the penalty of a meager sum of Rs. 35,717/-. We are further of the view that no question of law, requiring our determination, has been raised justifying admission of the petition. The writ petition is wholly without merit and the same is liable to be dismissed.

For the reasons afore-mentioned, this petition fails and the same is dismissed.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

9.2.2007
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